

## DEPARTMENT OF HEALTH

## NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act To enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code, § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of an amendment to Chapter 19 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Home and Community-Based Waiver Services for Persons with Mental Retardation and Developmental Disabilities". These rules establish standards governing the reimbursement of personal care services provided to participants in the Home and Community-Based Waiver Services for Persons with Mental Retardation and Developmental Disabilities (Waiver). The proposed amendment establishes standards for personal care services consistent with the Waiver approved by the Centers for Medicare and Medicaid Services.

Personal care services include assistance with eating, bathing, dressing, personal hygiene and activities of daily living. Emergency action is necessary for the immediate preservation of the health, safety and welfare of Waiver participants in need of personal care services.

The emergency rulemaking was adopted on September 13, 2005 and will become effective one day after publication of this notice in the *D.C. Register*. The emergency rules will remain in effect until January 12, 2006, unless superseded by publication by a Notice of Final Rulemaking in the *D.C. Register*.

The Director also gives notice of the intent to take final rulemaking action to adopt these rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**CHAPTER 19 of Title 29 DCMR (Home and Community-Based Waiver Services for Persons with Mental Retardation and Developmental Disabilities) is amended as follows:**

**A. Section 1901.1(n) (Covered Services) is amended to read as follows:**

(n) Personal care services as set forth in section 1910 of Title 29 DCMR.

**B. Section 1910 (Personal Care Services) is amended to read as follows:**

**SECTION 1910 PERSONAL CARE SERVICES**

1910.1 Personal care services shall be reimbursed by the Medicaid Program for each participant in the Home and Community Based Waiver Services for Persons with

Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

- 1910.2 Personal care services shall consist of assistance with bathing, eating, dressing, personal hygiene and assistance with activities of daily living. These services may include assistance with meal preparation, but shall not include the cost of the meals themselves. When specified in the plan of care as set forth in § 1904.4, these services may also include such housekeeping chores as bedmaking, dusting, and vacuuming, which are incidental to the care furnished, or which are essential to the health and welfare of the consumer rather than the consumer's family.
- 1910.3 Personal care services shall not include services that require the skills of a licensed professional or person certified to perform such functions, such as catheter insertion, administration of medications, or procedures requiring the use of sterile techniques or invasive methods.
- 1910.4 Personal care services shall only be provided to the consumer. Personal care services eligible for reimbursement shall include, but shall not be limited to the following services:
- (a) Basic personal care including assistance with bathing and personal hygiene, dressing, grooming, lifting and transferring, feeding, and bowel and bladder care;
  - (b) Household services including assistance with meal preparation in accordance with dietary guidelines, shopping, cleaning and laundry;
  - (c) Cognitive services including assistance with money management, use of medications, and providing instructions with adaptive skills;
  - (d) Mobility services including escorting and transporting the consumer to medical appointments, place of employment, socialization activities, approved recreational activities, and errands;
  - (e) Changing urinary drainage bags;
  - (f) Assisting consumers with range of motion exercises;
  - (g) Reading and recording temperature, pulse, respiration, and blood pressure; and
  - (h) Observing and documenting the consumer's status and reporting all services provided.

- 1910.5 Personal care services shall not be provided in a hospital, nursing facility, intermediate care facility for persons with mental retardation, or institution for mental disease.
- 1910.6 Personal care services eligible for reimbursement shall be provided in the following settings:
- (a) The consumer's home;
  - (b) A foster home;
  - (c) A supervised living arrangement; or
  - (d) A non-institutional place of residence other than as described in (a) through (c) of this section as permitted by District law.
- 1910.7 Personal care services shall be authorized and provided in accordance with each consumer's individual habilitation plan (IHP) or individual support plan (ISP).
- 1910.8 Each provider of personal care services shall:
- (a) Be a home health agency, social service agency, or other business entity;
  - (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for personal care services under the Waiver;
  - (c) Maintain a copy of the consumer's most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
  - (d) Ensure that each person administering personal care services is qualified and properly supervised;
  - (e) Have staff available to provide service twenty-four (24) hours a day, seven (7) days a week;
  - (f) Offer the Hepatitis B vaccination to each person administering services pursuant to this section;
  - (g) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor regulations at 29 CFR 1910.1030; and

- (h) Maintain at least one million dollars (\$1,000,000.00) in liability insurance.
- 1910.9 Each person administering services shall be supervised by one of the following as set forth in the IHP/ISP:
- (a) A registered nurse;
  - (b) A practical nurse under the supervision of a registered nurse; or
  - (c) The consumer's case manager.
- 1910.10 The frequency and intensity of supervision shall be set specified in the consumer's written plan of care.
- 1910.11 Each person providing services for a provider under section 1910.8 shall meet all of the following requirements:
- (a) Be at least eighteen (18) years of age;
  - (b) Be acceptable to the consumer;
  - (c) Be a citizen of the United States or an alien who is lawfully authorized to work in the United States;
  - (d) Be certified in cardiopulmonary resuscitation (CPR) and thereafter maintain current CPR certification;
  - (e) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD skin test or documentation from a physician stating that the person is free from communicable disease;
  - (f) Have the ability to read and write the English language;
  - (g) Have the ability to communicate with the consumer;
  - (h) Have a high school diploma or general equivalency development certificate;
  - (i) Be able to recognize an emergency and be knowledgeable about emergency procedures;
  - (j) Agree and be able to carry out responsibilities to provide personal care services consistent with the consumer's IHP or ISP;

- (k) Complete pre-service and in-service training approved by MRDDA;
- (l) Complete a minimum of twelve (12) hours of in-service training annually after the first year of employment;
- (m) Complete a personal care aide or home health aide training program that includes at least seventy-five (75) hours of classroom training with at least sixteen (16) hours devoted to supervised practical training, and pass a competency evaluation by the training institution for those services that the personal care aide is required to perform consistent with the requirements set forth in 42 CFR 484.36 prior to employment;
- (n) Comply with the requirements of the Health Care Facility Unlicensed Personnel Criminal Background check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44-551 *et seq.*).

- 1910.12 Personal care services shall not be administered by a spouse, parent or guardian of a minor child, or any other legally responsible individual who would ordinarily perform or be responsible for performing services on behalf of the consumer. A family member who is not legally responsible for performing services for the consumer shall be eligible to administer personal care services. Each family member administering personal care services pursuant to this section shall be employed by a provider under § 1910.8 and meet all of the requirements set forth in § 1910.11.
- 1910.13 If the consumer seeks to change providers, the case manager shall assist the consumer in selecting a new provider. The current provider shall not abandon the consumer and shall continue to provide services until the transfer has been completed.
- 1910.14 Each provider shall develop contingency staffing plans to provide coverage to each consumer in the event that the assigned personal care aide cannot provide the services or is terminated by the provider.
- 1910.15 If services are provided in a group setting, the specific number of hours rendered to each consumer shall be documented and maintained in the provider's records.
- 1910.16 The billable unit of service for personal care services shall be one hour.
- 1910.17 Each provider shall be reimbursed \$13.50 per hour for personal care services.

1910.18      Reimbursement for personal care services shall not exceed sixteen (16) hours per day per consumer regardless of the Medicaid funding source.

**C. SECTION 1999 (Definitions) is amended to add the following definitions:**

**Activities of daily living** – The ability to get in and out of bed, bathe, dress, eat, take medications prescribed for self-administration and to engage in toileting.

**Case manager** – A professional who assists consumers in gaining access to needed Waiver services and other State Plan services, as well as needed medical, social, educational, and other services regardless of the funding source for the service to which access is gained.

**Consumer**– An individual with mental retardation and developmental disabilities who has been determined eligible to receive services under the Home and Community-Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities.

**Consumer's home** – The natural home. The natural home does not include an institutional or residential facility or foster home.

**Communicable disease** – The meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

**Family** – Any person related to the consumer by blood, marriage or adoption.

**Group setting** – a setting in which two or more consumers who are receiving Waiver services reside.

**Plan of care** – A written document facilitated by the case manager which describes medical and other services to be furnished to the consumer, the frequency of the services and the type of provider to furnish the services. The Plan of Care shall be consistent with the IHP and ISP.

**Practical nurse**– A person who is licensed to or authorized to practice practical nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1985 (D.C. Law 6-99; D.C. Official Code § 3-1201.01 *et seq.*), or licensed as a practical nurse in the jurisdiction where services are rendered.

**Supervised living arrangement** – A living arrangement for one to three consumers with mental retardation and developmental disabilities that provides drop-in to twenty-four hour supervision and is funded by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5<sup>th</sup> Floor, Washington, D.C. 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules corresponding to the Medicaid waiver may be obtained from the same address.